

FILED

NOV 27 2018

Clerk, U.S. Courts
District Of Montana
Missoula Division

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICHAEL WAYNE POWELL,

Defendant.

Cause No. CR 16-34-M-DLC

ORDER

Defendant Powell is currently serving a 132-month sentence for drug trafficking. On October 29, 2018, he asked the Court to reduce his sentence by 25 months to account for time he spent in custody on an earlier, dismissed indictment for drug trafficking. He also asserted that his counsel was ineffective at sentencing for failing to request credit for this time. *See* Mot. to Correct (Doc. 48).

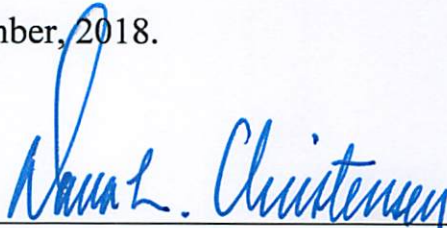
The Court advised Powell that it could consider the merits of his claims by recharacterizing his motion as a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255. In response to the Order, Powell states that he does not wish to proceed under § 2255 and withdraws his motion to correct the sentence.

A certificate of appealability need not be considered as Powell has not presented a motion described in 28 U.S.C. § 2253.

Accordingly, IT IS HEREBY ORDERED that Powell's motion to withdraw

his motion to correct the sentence (Doc. 50) is GRANTED. The motion to correct the sentence (Doc. 48) is DISMISSED WITHOUT PREJUDICE. The clerk will close the civil file by entering a judgment of dismissal.

DATED this 27th day of November, 2018.



Dana L. Christensen, Chief Judge
United States District Court